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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

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11 HERMY A. FUENTES and VIRGINIA } CASE NO. C08-02210 MMC
12 FUENTES, }
13 Plaintiffs, }
14 vs. } DEFENDANT PRIMERICA LIFE
15 PRIMERICA LIFE INSURANCE } INSURANCE COMPANY'S
COMPANY and DOES 1 through 20, } ANSWER TO COMPLAINT
16 Defendants. }
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Complaint Filed: March 24, 2008

Defendant Primerica Life Insurance Company (“Primerica”) answers the Complaint of Plaintiffs Hermy A. Fuentes and Virginia Fuentes (“Plaintiffs”) as follows:

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PARTIES

1. Referring to paragraph I of the Complaint, Primerica admits that it is a Massachusetts corporation authorized to do business in California by the California Secretary of State and California Department of Insurance. Primerica further affirmatively alleges that it is a Massachusetts corporation engaged in the insurance business with its principal place of business located at 3120 Breckinridge Boulevard, Duluth, Georgia 30099. Except as specifically admitted and alleged, Primerica denies the allegations of paragraph I.

2. Referring to paragraph II of the Complaint, Primerica lacks information and knowledge to form a belief as to any fictitious defendants that might be liable for the acts alleged in the Complaint and, on that basis, denies each and every allegation contained therein.

3. Referring to paragraph III of the Complaint, Primerica lacks information and knowledge to form a belief as to any fictitious defendants that might be liable for the acts alleged in the Complaint and, on that basis, denies each and every allegation contained therein.

4. Referring to paragraph IV of the Complaint, Primerica is informed and believes that Plaintiffs are the parents of Decedent Mercedes P. Fuentes (“Decedent”), who died on March 29, 2006, and on that basis, admits this allegation.

5. Referring to paragraph V of the Complaint, Primerica alleges that on January 7, 2005, Primerica issued a policy of term life insurance to Decedent, specifically policy number 0433333419 ("the Policy"), whereby Decedent's life was insured in the face amount of \$150,000. Said Policy bears a date of January 15, 2005

and an expiration date of January 15, 2051. Primerica further affirmatively alleges that Decedent identified Plaintiffs as the primary beneficiaries and Margaret Fuentes as the contingent beneficiary, therein. Except as specifically admitted and alleged, Primerica denies the allegations of paragraph V.

6. Referring to paragraph VI of the Complaint, Primerica is informed and believes that Decedent died in South San Francisco, County of San Mateo, State of California. Except as specifically admitted and alleged, Primerica denies the allegations of paragraph VI.

7. Referring to paragraph VII of the Complaint, Primerica is informed and believes that Plaintiffs gave Primerica due and timely notice and proof of Decedent's death. Except as specifically admitted and alleged, Primerica denies the allegations of paragraph VII.

8. Referring to paragraph VIII of the Complaint, Primerica is informed and believes that Plaintiffs have demanded of Primerica payment of \$150,000 and that Primerica has refused to pay the whole or any part of that amount. Except as specifically admitted and alleged, Primerica denies the allegations of paragraph VIII.

9. Referring to the allegations in paragraph IX of the Complaint, Primerica denies each and every allegation contained therein.

AFFIRMATIVE DEFENSES

First Affirmative Defense

(Failure to State a Claim for Relief)

10. Plaintiffs' Complaint, and each and every claim contained therein, fails to state a claim for relief against Primerica upon which relief may be granted.

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Second Affirmative Defense

(Rescission)

4 11. The Policy was and is subject to rescission and is void, *ab initio*, because
5 Decedent and/or her agent, intentionally, negligently, or otherwise misrepresented
6 and/or concealed material facts in connection with the application for the Policy.
7 These misrepresentations and/or concealments, which related to Decedent's health
8 history, were material in that, had Primerica known the true facts, it would have
9 rejected the application. Primerica reimbursed all premiums paid for the Policy.
10 Therefore, as against Primerica, Plaintiffs are not entitled to the relief sought in the
11 Complaint, which presumes the existence and enforceability of the Policy.

Third Affirmative Defense

(Intentional/Negligent Misrepresentation of Fact)

16 12. The Complaint, and each cause of action against Defendant therein, is
17 barred because, in applying for the Policy, Decedent and/or her agent, intentionally,
18 with no reasonable ground for believing it to be true, or negligently, made material
19 misrepresentations relating to the Decedent's health history in connection with the
20 application for the Policy. These misrepresentations were material in that, had
21 Primerica known the true facts, it would have rejected the application.

Fourth Affirmative Defense

(Suppression of Fact)

26 13. The Complaint, and each cause of action against Defendant therein, is
27 barred because, in applying for the Policy, Decedent and/or her agent, suppressed
28 material facts concerning the Decedent's health history, which material facts the

1 Decedent was bound and obligated to disclose to Defendant. The suppression of fact
 2 was material in that, had Primerica known the true facts, it would have rejected the
 3 application.

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5 **Fifth Affirmative Defense**

6 **(Failure to Comply with Policy Conditions)**

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8 14. Primerica is informed and believes, and on that basis alleges, that
 9 Decedent and/or her agent, failed to comply with one or more conditions precedent,
 10 current, and/or subsequent to obtain the Policy and/or under the Policy and, therefore,
 11 Plaintiffs are barred from the recovery sought against Primerica.

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13 **Sixth Affirmative Defense**

14 **(Privilege)**

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16 15. Each and every action or statement made by Primerica to or with
 17 reference to Plaintiffs, Decedent or each of them, was a good faith assertion of
 18 Primerica's rights and therefore was privileged.

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20 **Seventh Affirmative Defense**

21 **(Duty to Mitigate)**

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23 16. Plaintiffs were bound to exercise reasonable care and diligence to avoid
 24 loss and to minimize their damages, if any, and Plaintiffs may not recover for losses
 25 which could have been prevented by reasonable efforts on their part or on the
 26 Decedent's part.

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Eighth Affirmative Defense **(Failure to Perform)**

17. Primerica alleges that Decedent failed to meet or perform all the necessary covenants, conditions and/or promises required to be performed in accordance with the terms and conditions of the Primerica application for life insurance submitted by Decedent to Primerica, and/or Policy.

Ninth Affirmative Defense

(Unclean Hands)

18. Primerica is informed and believes that Plaintiffs' claim for relief is barred by the equitable doctrine of unclean hands.

Tenth Affirmative Defense

(Estoppel)

19. The Complaint and all the causes of action therein are barred by the equitable doctrine of estoppel.

Eleventh Affirmative Defense

(Waiver)

20. The Complaint is barred by the doctrine of waiver.

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Twelfth Affirmative Defense

(Reservation of Defenses)

21. Primerica alleges that it presently has insufficient knowledge or information from which to form a belief as to whether it may have additional, as yet unstated, defenses available.

WHEREFORE, Primerica prays as follows:

1. That Plaintiffs take nothing by way of the Complaint and that the Complaint be dismissed;
 2. That judgment be entered against Plaintiffs and in favor of Primerica;
 3. That Primerica be awarded its costs of suit herein; and
 4. For such other and further relief as this Court deems just and proper.

Dated: April 30, 2008

BARGER & WOLEN LLP

By:

**GAIL E. COHEN
SARAH HOUSHIAR
Attorneys for Defendant Primerica
Life Insurance Company**